

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

\* \* \*

MITCHELL KEITH GOODRUM,

Plaintiff,

v.

WOK RESTAURANT OWNERS, *et al.*,

Defendants.

Case No. 3:24-cv-00006-MMD-CLB

ORDER

*Pro se* Plaintiff Mitchell Goodrum filed an application to proceed *in forma pauperis* (“IFP”) (ECF No. 5), a motion for leave to file a civil rights complaint (ECF No. 1-1), and a civil rights complaint under 42 U.S.C. § 1983 (ECF No. 1-2 (“Complaint”)). Before the Court is the Report and Recommendation (“R&R”) of United States Magistrate Judge Carla L. Baldwin, recommending that the Court grant Plaintiff’s IFP application, dismiss his Complaint with prejudice, and deny his motion for leave to file a civil rights complaint as moot. (ECF No. 7.) Objections to the R&R were due February 13, 2024. (*See id.*) To date, Goodrum has not objected to the R&R. For this reason, and as further explained below, the Court will adopt the R&R in full and will dismiss this action with prejudice.

Because there was no objection, the Court need not conduct *de novo* review, and is satisfied that Judge Baldwin did not clearly err. *See United States v. Reyna-Tapia*, 328 F.3d 1114, 1116 (9th Cir. 2003) (“De novo review of the magistrate judges’ findings and recommendations is required if, but *only* if, one or both parties file objections to the findings and recommendations.”) (emphasis in original).

First, as to Plaintiff’s IFP application, the Court agrees with Judge Baldwin that Goodrum has demonstrated his inability to pay the filing fee. (ECF No. 7 at 1-2.) *See* 28 U.S.C. § 1915(a)(1); LSR 1-1. The Court thus grants the IFP application (ECF No. 5). Judge Baldwin next screens the Complaint under 28 U.S.C. § 1915A. A complaint in an

1 IFP action is subject to dismissal for failure to state a claim upon which relief may be  
2 granted. 28 U.S.C. § 1915(e)(2)(A), (B)(i)-(iii); Fed. R. Civ. Pro. 12(b)(6). Allegations in  
3 pro se complaints are “held to less stringent standards than formal pleadings drafted by  
4 lawyers[.]” *Hughes v. Rowe*, 449 U.S. 5, 9 (1980) (internal quotation marks and citation  
5 omitted). Judge Baldwin recommends dismissal because Goodrum’s only named  
6 defendant in his Section 1983 Complaint is Wok Restaurant Owners, a private party, and  
7 Goodrum does not allege that this private party acted under color of state law. (ECF No.  
8 7 at 3-4.) See, e.g., *Anderson v. Warner*, 451 F.3d 1063, 1067 (9th Cir. 2006) (explaining  
9 that an individual asserting a Section 1983 claim must allege a violation of a federally-  
10 protected right by a person or official acting under color of state law); *Price v. Hawaii*, 939  
11 F.2d 702, 707-08 (9th Cir. 1991) (noting that a private party is generally not acting under  
12 color of state law). Goodrum also does not allege that Defendant conspired or otherwise  
13 operated in tandem with a state actor. See *Franklin v. Fox*, 312 F.3d 423, 441 (9th Cir.  
14 2002) (noting that a private individual may be liable under Section 1983 if they conspired  
15 or entered joint action with a state actor). Thus, because Plaintiff fails to state a viable  
16 Section 1983 claim even when construing all allegations in his favor, the Court agrees  
17 with Judge Baldwin that dismissal is warranted. And because amendment would be futile,  
18 the Court dismisses the action with prejudice. See *Cato v. United States*, 70 F.3d 1103,  
19 1107 (9th Cir. 1995).

20 It is therefore ordered that Judge Baldwin’s Report and Recommendation (ECF  
21 No. 7) is accepted and adopted in full.

22 It is further ordered that Plaintiff’s IFP application (ECF No. 5) is granted.

23 It is further ordered that Goodrum is not required to pay an initial installment fee.  
24 However, the full filing fee will still be due under 28 U.S.C. § 1915, as amended by the  
25 Prison Litigation Reform Act.

26 ///

27 ///

28 ///

1 It is further ordered that the Nevada Department of Corrections is directed to pay  
2 to the Clerk of the United States District Court, District of Nevada, 20% of the preceding  
3 month's deposits to the account of Mitchell Keith Goodrum, #1213846 (in months that the  
4 account exceeds \$10.00) until the full \$350.00 filing fee has been paid for this action.

5 The Clerk of Court is further directed to file Plaintiff's Complaint (ECF No. 1-1).

6 It is further ordered that Plaintiff's Complaint (ECF No. 1-2) is dismissed with  
7 prejudice.

8 It is further ordered that Plaintiff's motion for leave to file a civil rights complaint  
9 (ECF No. 1-1) is denied as moot.

10 The Clerk of Court is directed to enter judgment accordingly and close this case.

11 DATED THIS 8<sup>th</sup> Day of March 2024.

12 

13 \_\_\_\_\_  
14 MIRANDA M. DU  
15 CHIEF UNITED STATES DISTRICT JUDGE  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28